

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR**

**WP (Crl) 178/2022  
CrIM 479/2022**

Reserved on: 05.08.2022  
Pronounced on: 26.08.2022

**Aijaz Ahmad Sofi**

... Detenue

Through: Mr. I. A. Sofi, Adv.

V/s

**UT of J&K and another**

Through: Mr. Sajad Ashraf, GA

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**

1. This is a petition under Article 226 of the Constitution of India filed by one Aijaz Ahmad Sofi, ["the detenue"], through his mother seeking quashment of his detention order no. DMS/PSA/139/2021 dated 28.02.2022 issued by District Magistrate, Srinagar, whereby the detenue has been put under preventive detention with a view to prevent him from acting in any manner prejudicial to the maintenance of security of state.
2. The impugned order is assailed by the detenue on the ground that the representation submitted by the detenue through his mother to the respondent no. 2, through registered post on 26.4.2022 has not been considered, and, therefore, a valuable fundamental right guaranteed to the detenue under Article 22 of the Constitution of India has been violated.

3. The detenué has also challenged the impugned order on the ground that the detaining authority has not shown its awareness with regard to the grant of bail to the detenué in FIR 26/2014 which speaks volumes about the non-application of mind on the part of the detaining authority. It is lastly urged that the relevant material relied upon in the grounds of detention was never served on the detenué, which disabled him to make effective representation against his detention.
4. The detenué has raised several other grounds to challenge the detention order. The counsel for the detenué, however, only presses aforesaid grounds of challenge.
5. Respondents have filed their reply affidavit stating therein that having regard to the nature of activities that the detenué had been indulging in over a period of time, the detaining authority was of the opinion that remaining of the detenué at large was detrimental to the security of the state. There is no averment in the reply affidavit as to whether the representation made by the detenué through his mother, was ever considered, though the detenué has placed on record postal receipt evidencing the moving of the representation dated 26.4.2022 by the detenué.
6. Having heard learned counsel for the for the detenué and perused the material on record, I am of the considered view that the impugned order of detention does not sustain in the eye of law, in that, the representation made on his behalf by his mother has not been considered by the respondents. Right of the detenué to make

- a representation and to have the same considered by the competent authority is a fundamental right guaranteed to a person under detention under Article 22 of the Constitution and the infraction of such a right renders the detention illegal and unconstitutional.
7. The detenu has not only specifically averred but has also placed on record copy of the representation submitted by the detenu through his mother. Although the respondents are silent about the representation made by the detenu through his mother, but the detenu has placed on record the postal receipt testifying the submission of the representation by him through his mother. There is no denial or rebuttal of the same by the respondents in their reply affidavit. In these circumstances, this Court has no option but to presume that the representation has been made by the detenu through his mother to the competent authority but the same has not been adverted to and considered. That being the admitted position, it is foregone conclusion that the order of detention impugned in this petition cannot survive on the touchstone of settled legal position and the express right guaranteed to the detenu under Article 22 of the Constitution of India. [See **Pankaj Kumar Chakrabarty & others Vs. State of West Bengal, AIR 1970 SC 97, a Constitution Bench Judgment**].
8. From the perusal of the objections filed by the respondents, it is abundantly clear that the detenu has been served with a copy of the detention order and the grounds of detention, but has not been

- supplied other material relied upon in the grounds of detention viz. FIR, reference of which is made by the detaining authority in the grounds of detention. It is thus clear that the detenu has also been deprived of relevant material which was required to be supplied to him along with the grounds of detention so as to enable him to make an effective representation.
9. Even though the detenu was not provided the requisite material, and he was only informed that he can make a representation to the government without specifying the authority to whom he can make the representation, the detenu through his mother moved a representation to respondent no. 2. Although, the respondents have denied to have received any representation from the detenu, the postal receipt on record of the file testifies that the detenu has moved the representation through his mother to the respondent no. 2, which representation was not considered by the competent authority.
10. For the foregoing reasons, I find merit in this petition and the same is accordingly allowed. The detention order impugned in this petition bearing no. DMS/PSA/139/2021 dated 28.2.2022 is set aside and the respondents are directed to release the detenu forthwith from the detention, if not required in any other case.

**(SANJEEV KUMAR)**  
**JUDGE**